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No. 94-2115

# In the Supreme Court of the United States

OCTOBER TERM, 1995

DONNA E. YOUNGER, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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13 pp

## QUESTION PRESENTED

Whether the costs of providing medical treatment to a debtor held in the custody of the United States Marshals Service pursuant to Fed. R. Bankr. P. 2005 were properly treated as administrative expenses entitled to priority treatment under 11 U.S.C. 503(b).

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Statement | 2 |
| Argument | 4 |
| Conclusion | 9 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Airlift International, Inc., In re*, 761 F.2d 1503 (11th Cir. 1985) | 6 |
| *Allied Mechanical Services, Inc., In re*, 885 F.2d 837 (11th Cir. 1989) | 6 |
| *Anderson* v. *City of Bessemer City*, 470 U.S. 564 (1985) | 7 |
| | 7 |
| *Broadcast Corp.* v. *Broadfoot*, 789 F.2d 1520 (11th Cir. 1986) | 7 |
| *Carpet Center Leasing Co., In re*, 991 F.2d 682 (11th Cir. 1993) | 6 |
| *Centrone Coal Co., In re*, 6 F. Supp. 628 (E.D.N.Y. 1934) | 7 |
| *Colortex Industries, Inc., In re*, 19 F.3d 1371 (11th Cir. 1994) | 5 |
| *Dant & Russell, Inc., In re*, 853 F.2d 700 (9th Cir. 1988) | 5 |
| *Estelle* v. *Gamble*, 429 U.S. 97 (1976) | 5, 8 |
| *Hearth & Hinge, Inc., In re*, 28 B.R. 595 (Bankr. S.D. Ohio 1983) | 5 |
| *Lenka, In re*, 259 F. 570 (E.D.N.Y. 1923) | 7 |
| *Photo Promotion Associates, Inc., In re*, 881 F.2d 6 (2d Cir. 1989) | 5 |
| *Reading Co.* v. *Brown*, 391 U.S. 471 (1968) | 6 |
| *Vermont Real Estate Investment Trust, In re*, 25 B.R. 804 (Bankr. D. Vt. 1982) | 6 |
| *Wall Tube & Metal Products Co., In re*, 831 F.2d 118 (6th Cir. 1987) | 2, 6 |

| Constitution, statutes and rules: | Page |
|---|---|
| U.S. Const.: | |
| Amend. V | 3 |
| Amend. VIII | 8 |
| 11 U.S.C. 102(3) | 5 |
| 11 U.S.C. 503(b) | 4, 5, 7, 8 |
| 11 U.S.C. 503(b)(1)(A) | 5 |
| 11 U.S.C. 507 | 2 |
| 11 U.S.C. 507(a) | 2 |
| 11 U.S.C. 726(a) | 2 |
| 18 U.S.C. 4006 | 8 |
| Fed. R. Civ. P. 52(a) | 7 |
| Fed. R. Bankr. P.: | |
| Rule 2004 | 2, 3 |
| Rule 2005 | 8 |
| Rule 2005(a) | 2 |
| Miscellaneous: | |
| 3 L. King, *Collier on Bankruptcy* (15th ed. 1995) | 5 |

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### OPINIONS BELOW

The decision without opinion of the court of appeals (Pet. App. 1a-2a) is unreported. The opinion of the district court (Pet. App. 3a-15a) is reported at 165 B.R. 965. The opinion of the bankruptcy court (Pet. App. 16a-23a) is reported at 163 B.R. 609.

### JURISDICTION

The judgment of the court of appeals was entered on March 27, 1995. The petition for a writ of certiorari was filed on June 26, 1995 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. Distribution of the property of an estate in a Chapter 7 bankruptcy proceeding is governed by the priorities established in 11 U.S.C. 507. 11 U.S.C. 726(a). Under Section 507(a), claims for administrative expenses are accorded highest priority. 11 U.S.C. 503(b) defines the set of expenses that may receive priority as administrative expenses:

> After notice and a hearing, there shall be allowed, administrative expenses * * * including—
>
> > (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of [a] case.

That provision allows certain expenditures made after an individual or entity is placed in bankruptcy to be paid ahead of the ordinary claims of creditors, ensuring that necessary efforts will be made for "the consolidation and distribution of the estate's assets to the benefit of the creditors." *In re Wall Tube & Metal Products Co.*, 831 F.2d 118, 122 (6th Cir. 1987).

The Federal Rules of Bankruptcy Procedure provide that a debtor may be required to submit to an examination by the court. Fed. R. Bankr. P. 2004. Where a debtor who is necessary to the administration of the estate seeks to avoid appearing for examination, "the court may issue to the marshal * * * an order directing the officer to bring the debtor before the court without unnecessary delay." Fed. R. Bankr. P. 2005(a).

2. In a divorce proceeding, the Superior Court of Chatham County awarded petitioner a judgment of $912,635 against her former husband, Harold F.

Younger. After he had exhausted his appeals, Mr. Younger transferred large amounts of money from local accounts to out-of-town banks. He later withdrew those funds and distributed them among friends and relatives. On March 18, 1992, petitioner discovered that Mr. Younger had vacated his apartment and removed all his furniture. Pet. App. 6a.

3. Petitioner instituted involuntary Chapter 7 proceedings against Mr. Younger on March 27, 1992. The bankruptcy court issued an order requiring Mr. Younger to submit to an examination pursuant to Fed. R. Bankr. P. 2004. Mr. Younger failed to appear at that examination and disregarded a subsequent court order to submit a schedule of assets and liabilities by June 10. Pet. App. 6a. On June 16, a district judge granted petitioner's motion for an order directing the Marshals Service to bring Mr. Younger before the court for purposes of an examination. *Id.* at 6a-7a. The Marshals Service apprehended Mr. Younger on June 25, and a United States Magistrate Judge ordered him to submit to a Rule 2004 examination. At the examination on June 27, Mr. Younger asserted his Fifth Amendment privilege against self-incrimination and refused to answer questions. The court granted Mr. Younger immunity from prosecution, but he persisted in refusing to testify. Pet. App. 7a.

The court found Mr. Younger in contempt for refusing to testify and ordered him incarcerated. During the period of his confinement, Mr. Younger developed acute heart and gall bladder problems, was hospitalized, and underwent surgery. Pet. App. 7a-8a. Mr. Younger's incarceration cost the Marshals Service $111,854.45, most of which was used to provide medical care. *Id.* at 8a.

4. On October 2, 1992 and April 5, 1993, the United States filed applications for allowance of its expenses incident to incarcerating Mr. Younger. The bankruptcy court concluded that the expenditures were actual, necessary costs of preserving the estate and thus should receive priority as administrative expenses under 11 U.S.C. 503(b). Pet. App. 8a, 22a. The court found that Mr. Younger's incarceration conferred an actual benefit on the estate, explaining that Mr. Younger "would have engaged in conduct that would dissipate the estate" if he had not been in custody. *Id.* at 22a. On petitioner's appeal, the district court likewise concluded that the costs of incarceration were properly treated as administrative expenses because Mr. Younger's "arrest and incarceration have conferred an actual and necessary benefit on his estate" by limiting his "ability to transfer or hide his assets." *Id.* at 11a-12a. The court noted that the estate had recovered nearly $400,000 from Mr. Younger during the pendency of the action. *Id.* at 12a. Observing that the Marshals Service "assumed constitutional and statutory duties to provide [Mr. Younger] with reasonable medical care" during the period of his incarceration, *ibid.*, the court held that "[s]ince the costs of incarceration necessarily include the costs of Mr. Younger's medical care, these expenses also are entitled to administrative expense status." *Id.* at 15a.

The court of appeals affirmed without opinion. Pet. App. 1a-2a.

## ARGUMENT

Petitioner does not contend that the decision of the court of appeals directly conflicts with this Court's precedents or that the case involves a disagreement

among the circuits. She argues instead that the courts below deviated from the ordinary manner of adjudicating claims for administrative expenses under 11 U.S.C. 503(b). Pet. 6. That argument is without merit. The district court properly applied Section 503(b) to the facts of this case. The court's findings of fact were not clearly erroneous, and the court of appeals correctly affirmed its decision. The decision turns on case-specific factual findings, and further review is not warranted.

1. Section 503(b)(1)(A) provides that any "actual, necessary costs and expenses of preserving the estate" receive priority as administrative expenses. Section 503(b) lists examples of the kinds of expenses that qualify as administrative, but that list is not intended to be exhaustive. As the Bankruptcy Code's rules of construction make clear, the word "including"—which is used in introducing the subsections of Section 503(b) and again in Section 503(b)(1)(A), the particular subsection pertinent here—should not be read as limiting administrative expenses to the particular items listed. 11 U.S.C. 102(3); see *In re Colortex Industries, Inc.*, 19 F.3d 1371, 1377 (11th Cir. 1994); 3 L. King, *Collier on Bankruptcy* ¶ 503.04, at 503-20 (15th ed. 1995). The application of Section 503(b) therefore requires the exercise of considerable judgment, and bankruptcy courts are accorded "broad discretion in determining whether to award administrative expense priority." *In re Dant & Russell, Inc.*, 853 F.2d 700, 707 (9th Cir. 1988); see also *In re Photo Promotion Associates, Inc.*, 881 F.2d 6, 8 (2d Cir. 1989); *In re Hearth & Hinge, Inc.*, 28 B.R. 595, 596 (Bankr. S.D. Ohio 1983). This Court has stated that the decision to treat particular expenses as administrative costs should be

guided by the statutory objective of "fairness to all persons having claims against an insolvent." *Reading Co.* v. *Brown*, 391 U.S. 471, 477 (1968).

To treat the costs of incarcerating Mr. Younger as administrative expenses is not, as petitioner argues, "a departure from the accepted and usual course of judicial proceedings" in bankruptcy cases, Pet. 6, but rather is consistent with courts' treatment of several other kinds of expenses. This Court has held that damages resulting from the negligence of a bankruptcy receiver are administrative expenses. *Reading*, 391 U.S. at 485. In *In re Wall Tube & Metal Products Co.*, 831 F.2d 118, 124 (6th Cir. 1987), the court held that the State of Tennessee could recover as administrative expenses the funds it spent to assess the gravity of environmental hazards on the debtor's property. See also *In re Vermont Real Estate Investment Trust*, 25 B.R. 804, 806 (Bankr. D.Vt. 1982) (municipality's expenses in removing dangerous building from leasehold of estate are administrative expense). Similarly, in *In re Allied Mechanical Services, Inc.*, 885 F.2d 837, 839 (11th Cir. 1989), the court held that the United States could recover as an administrative expense the interest on tax liabilities incurred during reorganization. See also *In re Carpet Center Leasing Co.*, 991 F.2d 682, 687 (11th Cir. 1993) (creditor's expense in providing equipment for benefit of estate is administrative expense); *In re Airlift International, Inc.*, 761 F.2d 1503 (11th Cir. 1985) (costs resulting from breach of postpetition executory contract are administrative expenses). Courts have thus recognized that a variety of expenditures, including governmental expenditures linked to bankruptcy estates, are "actual, necessary" expenses of preserving the estate. The

decision in this case is consistent with the decisions of other courts that have applied Section 503(b).[1]

2. Petitioner correctly observes (Pet. 9) that expenditures receive priority as administrative expenses only when they actually benefit the estate. See *Broadcast Corp.* v. *Broadfoot*, 789 F.2d 1520, 1532 (11th Cir. 1986). Contrary to petitioner's assertions (Pet. 10-12), however, that requirement was satisfied here. The bankruptcy court found that the incarceration actually benefitted the estate because Mr. Younger "would have engaged in conduct that would dissipate the estate" if he had not been confined. Pet. App. 22a. The district court agreed, concluding that Mr. Younger's confinement "conferred an 'actual, concrete benefit' upon the estate by allowing the recovery of $400,000 and served to preserve the estate by precluding Mr. Younger from further transfers to dissipate the estate." *Id.* at 12a.

The determination that Mr. Younger's arrest and confinement conferred an actual benefit on the estate is a case-specific factual finding subject to review under the "clearly erroneous" standard. See Fed. R. Civ. P. 52(a); *Anderson* v. *City of Bessemer City*, 470 U.S. 564, 573 (1985). That finding was amply supported by the record. Before his arrest, Mr. Younger transferred large amounts of money to out-of-town accounts in violation of a court order and disbursed

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[1] Petitioner's reliance (see Pet. 13-14) on *In re Lenka*, 295 F. 570 (E.D.N.Y. 1923), and *In re Centrone Coal Co.*, 6 F. Supp. 628 (E.D.N.Y. 1934), is misplaced. Neither of those cases addressed the question whether costs of incarceration can constitute costs of preserving the estate under Section 503(b) or its predecessors, nor did either case involve a finding that the debtor's confinement had directly benefitted the estate.

the funds to friends and relatives. Pet. App. 6a, 16a. In his apparent determination to keep from his former wife the property that is legally hers, he refused to submit to examination before the bankruptcy judge and continued to refuse to testify even after his incarceration. *Id.* at 7a-8a. The courts below were fully justified in finding that Mr. Younger would have concealed and sought further to disburse his assets had he remained at liberty. Indeed, petitioner herself successfully moved for the judicial order directing Mr. Younger's arrest, *id.* at 7a, and her invocation of Fed. R. Bank. P. 2005 necessarily presumed that the arrest could be expected to benefit the estate, see Pet. App. 13a & n.4.

Finally, the costs of medical care were a necessary incident to Mr. Younger's incarceration. Once Mr. Younger was in the custody of the Marshals Service, the United States was subject to a constitutional and statutory obligation to provide treatment. See *Estelle* v. *Gamble*, 429 U.S. 97, 106 (1976) (Eighth Amendment requires government to respond to serious medical needs of prisoners); 18 U.S.C. 4006 (government responsible for "the reasonable and actual cost of the subsistence of prisoners in the custody of any marshal of the United States"). The courts below correctly concluded that expenditures for medical care were part of the cost of incarcerating Mr. Younger for the benefit of the estate and in the circumstances of this case were therefore entitled to priority treatment as administrative expenses under Section 503(b).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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